

SHD Paraphrased Regulations - Social Services

610 In Home Supportive Services General

610-1

Counties are responsible for informing IHSS recipients of their rights and responsibilities in relation to eligibility and need for services and for assisting recipients as needed in establishing their eligibility and need for service. Counties are also responsible for complying with administrative standards to insure timely processing of recipient requests for service. (§30-760.2)

611-1

An individual shall be considered to be disabled for purposes of IHSS if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months. The regulation makes reference to the disability criteria set forth in 20 Code of Federal Regulations §416, Subpart 1. (§§30-771.3 and .4)

611-2

A person is eligible for IHSS who is living in his/her own home and who meets all SSI/SSP eligibility criteria, except for income in excess of SSI/SSP eligibility standards. (§30-755.113)

611-3

IHSS shall be authorized only in cases where the recipient would not be able to remain safely in his/her home without authorized In-Home Supportive Services. (§30-700.1)
This regulation is based on Welfare and Institutions Code (W&IC) §12300.

611-4

An application for services shall be in writing on a form prescribed or approved by the Department. If the request for services is received by telephone or letter, a social service staff member, with the express authorization of the applicant, may sign the application. However, such an application does not meet the requirements of 30-009.23 for establishing eligibility. Eligibility information must be verified or the applicant must sign the application statement during a face-to-face contact. (§30-009.22)

611-5

The effective date of eligibility is the actual date of determination unless the determination is made within 30 days of the date of application and the applicant is determined to have been eligible when services were initiated. In no event shall the effective date of eligibility be prior to the date of application. (§30-009.231)

611-6

In order to be eligible for IHSS, an individual shall be a U.S. citizen, or an eligible alien pursuant to Welfare and Institutions Code (W&IC) §11104. (§30-770.41)

State law provides that:

"Aliens shall be eligible for aid only to the extent permitted by federal law. Aliens shall only be eligible for aid if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law. No aid shall be paid unless evidence as to eligible alien status is present." (W&IC §11104)

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611-7

Federal regulations explain how to prove a person is lawfully admitted for permanent residence in the United States. Persons can provide:

1. An Alien Registration Receipt Card (Immigration and Naturalization (INS) Form I-151 or I-551, including temporary I-551s which are stamped in a passport or on INS Form I-94 (Arrival-Departure Record) for aliens admitted under §§204, 206, or 245 of the Immigration and Nationality Act (INA), and the earlier version INS Form AR-3 or AR-3a).
2. A reentry permit.
3. An alien identification card showing admission to the Northern Mariana Islands for permanent residence.
4. INS Form 688 showing a grant of lawful temporary resident status under §210 or 210A of the INA.

(20 Code of Federal Regulations (CFR) §416.1615(a))

Federal regulations provide that individuals are permanently residing in the United States under color of law (PRUCOL) if they are aliens residing in the United States with the knowledge and permission of the INS and the agency does not contemplate enforcing departure of the alien. Types of verification of PRUCOL status are set forth in 20 CFR §416.1618(b)-(e). (20 CFR §416.1618(a))

611-8

Persons applying for IHSS who do not receive SSI shall meet the SSI/SSP eligibility standards except as modified in §30-755.1. (§30-770.1)

Detailed eligibility standards shall be those located in 20 Code of Federal Regulations §416, except as modified by IHSS regulations beginning with §30-750. (§30-770.2)

611-9

It is the CDSS position that "since SSI/SSP law and regulations govern IHSS income eligibility, these [SSI/SSP] changes also affect IHSS." (emphasis added)

On this basis, and without changing any state regulations, the CDSS issued an All-County Letter (ACL) which changes resource evaluations. Under this ACL, the county could impose up to a 36-month penalty, effective December 14, 1999, for resources which were transferred for less than fair market value, whether or not the individual was notified of this rule in accord with §30-760.2. This ACL also states that effective December 14, 1999, assets held in certain trusts may be counted as resources.

(ACL No. 00-35, May 19, 2000)

612-1

A "severely impaired" individual is a recipient with a total assessed need for 20 or more hours per week in one or more of the following areas:

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1. Nonmedical personal services, listed in §30-757.14:
 - (a) bowel and bladder care
 - (b) respiration
 - (c) consumption of food (feeding)
 - (d) routine bed baths
 - (e) bathing, oral hygiene and grooming
 - (f) dressing
 - (g) rubbing of skin to promote circulation, etc.
 - (h) moving into and out of bed
 - (i) care of and assistance with prosthesis and assistance with self-administration of medicines
 - (j) routine menstrual care
 - (k) ambulation
2. Meal Preparation
3. Meal cleanup when preparation of meals and feeding are required.
4. Paramedical services.

(§30-701(s)(1))

612-2 REVISED 7/06

The maximum IHSS hours which may be authorized for a recipient who is severely impaired are 283 hours per month. Effective April 14, 2000, the CDSS repealed Handbook §30-765.112, which contained the maximum allowable dollar payments.

A severely impaired person is someone who needs 20 or more hours of service per week in the areas specified in §30-701(s)(1).

(§30-765.11 and .111 Handbook;)

612-3

Severely impaired recipients (as defined in §30-753(s)(1)) shall have the option of choosing to directly receive their payment at the beginning of each authorized month. Such payment shall be the net amount exclusive of the appropriate withholdings. It shall be the responsibility of the recipient who receives payment in advance to submit his/her provider's timesheets at the end of each authorized service month to the appropriate county social services office. (§30-769.73)

612-4 REVISED 7/06

The maximum monthly IHSS authorization for a nonseverely impaired individual is 195 hours. Effective April 14, 2000, the CDSS repealed Handbook §30-765.122, which contained the maximum allowable dollar payments. (§30-765.12 and .121 Handbook)

612-5 ADDED 7/06

Under IHSS-R, .Non-Severely Impaired (NSI) recipients may receive up to a total of 195 hours, including any needed protective supervision. (WIC 12303.4(a), MPP 30-765.12).

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The entire 195 hours can be for protective supervision if no other needed services are paid for by IHSS.

Severely Impaired (SI) recipients may receive up to a total of 283 hours, including any needed protective supervision. (WIC 12303.4(b), MPP 30-765.11).

612-6

State law gives the CDSS the authority, to the extent permitted by federal law, to waive regulations and general policies and make resources available which are necessary for the administration of Welfare & Institutions Code (W&IC) §9560 and following. (W&IC §9562(b))

Pursuant to this authority, the CDSS has authorized the MSSP to supplement their clients' IHSS awards as follows:

- (a) For cases authorized to receive the statutory maxima, there will be no reduction in the authorization of services when the MSSP grants an additional level of services above the IHSS maxima.
- (b) For cases assessed at a level less than the maxima, additional hours authorized by the MSSP will not be considered an alternative resource, and IHSS will be authorized at the previously determined need level.

(All-County Letter No. 00-34, May 19, 2000)

613-1

Prior to March 27, 2000, a person's "own home" was defined in state regulations as the place in which an individual chooses to reside. An individual's "own home" does not include an acute care hospital, Skilled Nursing Facility/Intermediate Care Facility, community care facility, or board and care facility. A person receiving an SSI/SSP payment for a nonmedical out-of-home living arrangement is not considered to be living in his or her own home. (§30-701(o)(2)), renumbered from §30-753(o)(2), November 14, 1998; revised March 27, 2000)

The regulations cited above were revised but then reinstated because the amended regulations had been issued without meeting the requirements of the Administrative Procedures Act. (*Lubahn v. Saenz*, Preliminary Injunction, Sacramento Superior Court, June 2, 2000)

613-1A

Under state law, the purpose of the IHSS Program is to provide those supportive services to Aged, Blind and Disabled (ABD) persons who are unable to perform the services themselves and "who cannot safely remain in their homes or abodes of their own choosing unless these services are provided." (W&IC §12300(a))

613-1B

In a case involving whether a California veteran should have a particular piece of property treated as the veteran's home, the Court of Appeals discussed the issue in the following manner:

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"The word 'home' is defined in the dictionary as:

"(T)he house and grounds with their appurtenances habitually occupied by a family; one's principal place of residence; DOMICILE." (Webster's Third New International Dict. (1971), G. & C. Merriam Co.) "Home", def. 1a, p. 1082.) The word home is '[a] relative term, whose meaning must often necessarily depend on the intent as determined by the context; and which may be, and is, often used in different sense...., a dwelling house, or dwelling place; a household; the house in which one lives, especially the house in which one lives with his family; the habitual abode of one's family; the place of constant or permanent residence; the place in which, when weary, one can go and rest; the place where one and his family habitually dwell, which they may leave for temporary purposes, and to which they return when the occasion for absence no longer exists; the place where one permanently resides, and to which he intends to return when away from it; residence; some permanent abode or residence where the person residing intends to remain.' (40 C.J.S. "Home," pp. 415-419, footnotes omitted.) The concept of a home has traditionally meant the place of constant residence; the seat of one's family life. (See *Estate of Baird* (1924) 193, Cal, 225, 285, 223 P. 974.) 'Home is the place where a person dwells and which is the center of his domestic, social and civil life.' (Rest. 2d Conf. Of Laws, §12.)"

(*Nadler v. California Veterans Board* (1984) 152 Cal. App. 3d 707, 199 Cal. Rptr. 546)

The word "abode" is defined as a place in which a person resides; residence; dwelling; home; or an extended stay in a place; sojourn. (Random House Websters College Dictionary, 1996 Edition)

613-1D

On June 2, 2000, the Sacramento County Superior Court stayed, enjoined and prohibited the CDSS "from implementing the emergency regulations denying eligibility for In-Home Supportive Services to people who are homeless, including people who live in homeless shelters, transitional housing, and welfare motels as provided for in regulation package ORD #0300-07, including but not limited to new Manual of Policy and Procedure §30-701(o) until such time as these regulations are promulgated in accordance with the requirements of the California Administrative Procedures Act, Gov. Code §§11340 et seq., including the opportunity for public review and comment." (*Lubahn v. Saenz*, Preliminary Injunction, Case No. 00C500726, Sacramento County Superior Court, June 2, 2000)

613-2

A "shared living arrangement" is a situation in which one or more recipient(s) resides in the same living unit with one or more persons. A shared living arrangement does not exist if a recipient is residing only with his or her able and available spouse. (§30-701(s)(2), renumbered from §30-753(s)(2), November 14, 1998)

613-3

A "housemate" is defined as a person who shares a living unit with a recipient. An able and available spouse or live-in provider is not considered a housemate. (§30-701(h)(2), renumbered from §30-753(h)(2), November 14, 1998)

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613-4

A "landlord/tenant living arrangement" exists when there is a shared living arrangement and one housemate (the landlord) allows another housemate (the tenant) to share housing facilities in return for monetary or in-kind payments. The landlord/tenant arrangement is not considered to exist between a recipient and his/her live-in provider. (§30-701(l)(6), renumbered from §30-753(l)(6), November 14, 1998)

613-5

A "live-in provider" is defined as an individual who is not related to the IHSS recipient and who lives in the recipient's home expressly for the purpose of providing IHSS-funded services. (§30-701(l)(3), renumbered from §30-753(l)(3), November 14, 1998)

613-6

Related services (meal preparation and cleanup, menu planning, laundry, and shopping and errands) shall be prorated to all the housemates involved when the need is being met in common with other housemates. When the service is not being provided by a housemate, and is being provided separately to the recipient, the assessment shall be based on the recipient's individual need. (§30-763.32)

613-7

To assess need for IHSS recipients who live in shared living arrangements the following procedures are used for domestic services and heavy cleaning: No need shall be assessed for areas not used by the recipient. In common living areas, the recipient's need shall be his/her prorated share. For areas used solely by the recipient, the assessment shall be based on his/her individual need. (§30-763.31)

613-8

When the IHSS recipient is a parent living with his or her child(ren) who is under 14 years of age and which child(ren) is not eligible or does not need IHSS, the recipient's need for domestic and heavy cleaning services in common living areas, and for related services, shall be assessed as if the child(ren) did not live in the home. (§30-763.46)

614-1

When the IHSS recipient is under 18 years of age and is living with the recipient's parent(s), IHSS may be purchased from a parent when all of the following conditions are met:

1. The parent has left full-time employment or is prevented from obtaining full-time employment because of the need to provide IHSS to the child.
2. There is no other suitable provider available.
3. If the child does not receive the listed services the child may inappropriately require out-of-home placement or may receive inadequate care.

(§30-763.451)

614-2

When both parents are in the home, a parent may receive a payment as an IHSS provider only under the following conditions:

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1. The conditions specified in §§30-763.451(a) through (c) are met.
2. The nonprovider parent is unable to provide the services because he/she is absent because of employment or in order to secure education or is physically or mentally unable to provide the services, as specified in §30-763.442.
3. If the nonprovider parent is unable to provide services because of employment or educational purposes, payment shall be made to the provider only for services normally provided during the periods of the nonprovider's absence.

(§30-763.453)

614-3

When the recipient is under 18 years of age and living with the recipient's parent(s), IHSS may be purchased from a provider other than the parent(s) when the parent(s) are not able to provide the services due to employment or educational related absence, physical or mental inability to perform the services, or absence due to medical treatment. Up to eight hours per week may be authorized for periods when the parent(s) must be absent from the home in order to perform shopping and errands essential to the family or for essential purposes related to the care of the recipient's siblings who are minors.

(§§30-763.441-.444)

616-1

The county shall insure that contractors who provide IHSS guarantee the continuity and reliability of service to recipients, supervision of service providers, and that each service provider is capable of and is providing the service authorized. (§30-767.122)

616-2

IHSS can be obtained through the purchase of such services from individuals. The county is required to make a reasonable effort to assist the recipient to obtain a service provider when the recipient is unable to obtain one individually. (§30-767.13)

616-3

In the payrolling system for individual providers, the county is required to enter prescribed data on all recipients and providers into the payrolling system; change data as necessary to ensure correct payment to the payrolling contractor by reviewing and resolving discrepancies set forth on the timesheets; retain completed timesheets in such a manner that they are easily accessible for review; and respond to and resolve payment inquiries from recipients and providers. The payrolling contractor will provide all necessary information. The county has the authority for initiating emergency and supplemental checks when an emergency situation exists or in other unusual situations not provided by the regular payrolling process. (§§30-769.24 and .25)

616-4

To insure quality of service delivery, social service staff shall offer services appropriate to the needs of the individual or family. (§30-009.21)

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617-1

The county shall have the right to change from one to another of the delivery of service methods or from payment in advance to payment in arrears when:

- (1) It has been determined that a recipient is using his/her payment for other than the purchase of authorized services;
- (2) The recipient has failed to submit time sheets within 90 days from the date of payment; or
- (3) The recipient has not provided timely payment to his/her providers.

(§30-767.133)

619-1

The California Court of Appeals has held that the county is required to issue retroactive benefits when IHSS benefits have been wrongfully denied. This remedy applies even if the claimant has not received services during the period of the wrongful denial. (*Leach v. Swoap* (1973) 35 Cal.App.3d 685, 110 Cal.Rptr. 62)

619-2

An overpayment occurs when a cash payment was made for the purchase of IHSS or services were delivered in an amount to which the recipient was not entitled. Aid pending a state hearing is not an overpayment and cannot be recovered. (§30-768)

619-3

The repayment liability of the recipient shall be limited to the amount of liquid resources and income excluded or disregarded by SSI/SSP. (§30-768.311)

619-4

IHSS overpayments can be recovered using any one or a combination of the following methods:

- (a) Balancing it against a repayable underpayment. But if the underpayment is discovered and payable prior to the time that an overpayment is discovered and adjustable, it cannot be balanced against the overpayment.
- (b) Payment adjustment in which the county reduces payment for future authorized services to offset an overpayment. If the service payment is reduced to adjust for previous overpayments, the recipient shall be responsible for paying the current month's adjustment amount to the service provider in addition to any share of cost.
- (c) Voluntary cash recovery whereby repayment is voluntarily made to the county by a recipient who has incurred an overpayment.
- (d) Civil judgment. The county shall have the authority to demand repayment and file suit for restitution for any unadjusted portion of an overpayment.

(§30-768.32)

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619-5

The Court of Appeal determined that Administrative Law Judges (ALJs) had the authority to award interest in conjunction with the issuance of retroactive benefits. (*Knight v. McMahon* (1994) 26 Cal.App. 4th 747)

On August 29, 1996 the California Supreme Court held that Unemployment Insurance ALJs did not have the authority to award interest. The Court held that those ALJs had no such authority. The Court specifically disapproved the *Knight* case, to the extent that it allowed CDSS ALJs to award interest. Thus, CDSS ALJs may no longer authorize interest payments when retroactive aid is ordered, effective September 29, 1996. (*AFL and CIO v. Unemployment Insurance App. Bd.* (1996) 13 Cal. 4th 1017, 56 Cal. Rptr. 2d 109; All-County Information Notice No. I-52-96, September 25, 1996)